IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9359 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANT NAVINCHANDRA KHATRI THRO' FRIEND HITENDRA C. RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR PK SHUKLA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Surat City on 10th August, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 11th August, 2000 in pursuance of the above said order.

2. The detaining Authority took into consideration the crime registered against the petitioner before Umra Police Station under the Bombay Prohibition Act. The detaining authority placed reliance on the complaint and investigation made in the said crime registered against the petitioner. The detaining authority also placed reliance on the statements of two witnesses who on assurance of anonymity offered their statements to the concerned authority to the extent that the petitioner was dealing in selling of illegal liquor and that he was taking quarrel on suspicion that the concerned witnesses were giving information to the police about the illegal activities of the petitioner. As per the statements of the witnesses, the respective witness on the said suspicion, was beaten by the petitioner, which obstructed to public peace. From the above materials, the detaining authority came to the conclusion that the petitioner was a " bootlegger " within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Mr.N.M. Kapadia for the petitioner and learned AGP Mr.P.K. Shukla for the respondents were heard.

4. Amongst various grounds advanced against the order of detention, it was vehemently urged that the order of detention is vitiated by non-application of mind by the detaining authority in not considering the less drastic remedy available to the detaining authority. It was urged that the detaining authority failed to consider the remedy of cancellation of bail was available to the detaining authority. The crime against the petitioner was registered on 12th May, 2000 and he came to be released on bail from 15th of May, 2000. Detaining authority simply observed in the grounds of detention that though the petitioner was released on bail but during bail also he continued his illegal activities of bootlegging.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995(2) GLR 1134 and again in LPA No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September, 1999, by Bench decision, this court ruled that the powers under Section 437(5) of the Cr.P.C. were far

more wide in import and intent. The detaining authority failed to consider the said provision in both the above cases, the order of detention came to be quashed on this ground alone because the detaining authority failed to consider the less drastic remedy available to the detaining authority as to the cancellation of bail. This was considered to be non-application of mind by the detaining authority to the relevant aspects of the case. The facts of the present case are also squarely covered by the ratio of the above said decision. Even after the release of the petitioner on 15th May, 2000 on bail, it appears that the detaining authority has not at all considered resorting to the provisions of Sec. 437(5) of the Cr.P.C for cancellation of bail. Instead, a harsh order of detention came to be passed. Therefore, non-application of mind on the part of the detaining authority is obvious to the extent that the detaining authority failed to consider the aspect of less drastic remedy to prevent the illegal activity of the petitioner. The order of detention on this ground alone is required to be set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Surat City on 10th August , 2000 against the petitioner under the PASA Act is a hereby ordered to be quashed and set aside. Petitioner - Hemant Navinchandra Khatri is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair